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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 2496-47

CAPITAL TRANSIT COMPANY, A CORPORATION, ET AL.,
Plaintiffs,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants

Civil Action No. 3052-48

CAPITAL TRANSIT COMPANY, A CORPORATION, ET AL.,
Plaintiffs,

v.

UNITED STATES OF AMERICA AND INTERSTATE COMMERCE COMMISSION,
Defendants

CONSOLIDATED CAUSES

STATEMENT AS TO JURISDICTION

Filed Feb. 3, 1949. Harry M. Hull, Clerk.

In compliance with Rule 12 of the Rules of the Supreme Court of the United States, as amended, intervening defendants-appellants, Alexandria, Barcroft and Washington Transit Company, and Washington, Virginia and Maryland

Coach Company, Incorporated, submit herewith their statement disclosing the basis upon which the Supreme Court of the United States has jurisdiction on appeal to review the judgment and decree of the District Court entered in these causes on December 8, 1948.

A petition for appeal was presented and allowed on February 3, 1949, together with a presentation of an assignment of errors.

Jurisdiction

The jurisdiction of the Supreme Court to review by direct appeal the decisions in these causes is conferred by the Act approved June 25, 1948, effective September 1, 1948, Title 28, U. S. Code, Section 1253 and Section 2101 (b).

The following decisions, it is respectfully submitted, are believed to sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in these cases. *United States* v. *Capital Transit Company*, 325 U. S. 357; *United States* v. *Pennsylvania Railroad Company*, 326 U. S. 612; *United States* v. *Lowden*, 308 U. S. 225, and *Interstate Commerce Commission* v. *Hoboken Manufacturers' Railroad Company*, 320 U. S. 368.

Statutes Involved

These causes present for interpretation numerous sections of the Interstate Commerce Act, as amended, (49 U. S. C. 1, *et seq.*); especially Sections 203 (b) (8), Section 203 (a) (10), Sections 203 (b) (7a), Section 206 (Second proviso), Section (a) (4a), Section 216 (e), Section 216 (1), and Section 216 (f) are involved in this appeal.

The Issues and the Rulings Below

The judgment and decree of December 8, 1948 by the statutory three-judge district court for the District of Columbia, set aside orders of the Interstate Commerce Com-

mission dated May 9, 1947, in Docket No. MC C-891, *Cancellation of Joint Fares Between District of Columbia and Nearby Virginia*, 47 M. C. C. 205, and orders of June 22, 1945 and July 7, 1948, in Docket No. 28991, *Passenger Fares Between District of Columbia and Nearby Virginia Points*, 270 I. C. C. 651.

On June 17, 1947 a suit was filed to set aside the orders of the Interstate Commerce Commission of May 7, 1947 in Docket No. MC C-891, and June 22, 1945, in Docket No. 28991. An additional suit was filed in the District Court of the United States for the District of Columbia on July 26, 1948 to set aside the orders of the Commission dated June 22, 1945 and July 7, 1948, in Docket No. 28991.

These related suits were consolidated and a single opinion rendered by the District Court.

These causes arise from proceedings before the Interstate Commerce Commission in its Docket No. 28991 begun in 1943 on complaint of the Secretary of War. After full and complete hearings were held by the Interstate Commerce Commission in its Docket No. 28991, at which hearings all parties were represented by counsel and presented evidence, the Commission, on June 12, 1945 issued an order requiring the establishment of joint fares between the District of Columbia and nearby Virginia points. 258 I. C. C. 559. This order was contested and finally appealed to the Supreme Court of the United States. *United States* v. *Capital Transit Company, et al.*, 325 U. S. 357.

Predicated upon this Supreme Court decision, the Commission issued its order dated June 22, 1945. The Commission's order of June 22, 1945 required the Capital Transit Company and the Virginia companies, among other things, according as they participated in the transportation of passengers between all points in the District of Columbia and certain points in Arlington County, Virginia, to estab-

lish and thereafter maintain and apply joint fares, including transfer privileges between the street railway and motor bus lines of Capital Transit Company within the District of Columbia.

At the time of the Commission's decision, and order of June 22, 1945 in Docket No. 28991, the Capital Transit Company was serving the Pentagon Building solely in the state of Virginia, under temporary operating authority issued by the Interstate Commerce Commission. The additional installations in Virginia to which joint fares were prescribed, namely, the Navy Arlington Annex, the Air Force Annex, and the Washington National Airport, Virginia, were served by the Alexandria, Barcroft and Washington Transit Company, and the Washington, Virginia and Maryland Coach Company, Incorporated.

On April 1, 1947 the Capital Transit Company discontinued its temporarily authorized operations to the Pentagon Building, and on and after that date, ceased to operate motor buses over a regular route between points and places in the District of Columbia and the Pentagon Building, Arlington County, Virginia.

On March 6, 1947, cognizant of its intention to cease operations on March 31, 1947, the Capital Transit Company submitted to the Interstate Commerce Commission, a notice of revocation of its concurrences issued to the Virginia bus lines for tariffs in which joint fares and the rules and regulations affecting such joint fares were published. This notice bore an effective date of May 12, 1947.

The Interstate Commerce Commission, after hearing in Docket No. MC C-891, rejected for filing the notice of revocation submitted by the Capital Transit Company.

The Capital Transit Company, on or about May 7, 1947 in an *ex parte* proceeding, without notice to the Virginia companies or the Interstate Commerce Commission, peti-

tioned the Public Utilities Commission for a Declaratory Order on the question of the jurisdiction of the Interstate Commerce Commission and the Public Utilities Commission over the rates, fares and compensation for the transportation service performed by the Capital Transit Company from one point within the District of Columbia to another point within the District of Columbia, for passengers moving in interstate commerce over the joint facilities of the Virginia companies and the Capital Transit Company.

The Public Utilities Commission in the aforesaid *ex parte* proceeding, by its opinion and order No. 3209, dated June 11, 1947, found that the transportation of passengers by the Capital Transit Company from one point to another, within the District of Columbia, is subject to the jurisdiction of this Commission, irrespective of whether or not such passengers may have origins or destinations from or to points without the District of Columbia via the lines of other common carriers of passengers; the fares or compensation to be charged, demanded, collected, or received by Capital Transit Company for such services rendered or to be rendered by it, from one point to another within the District of Columbia to passengers traveling between points in the District of Columbia and points in Arlington County, Virginia, shall be no greater or less than the fares charged, collected, or demanded for transportation rendered or to be rendered between points and places within the District of Columbia solely.

On June 17, 1947, Capital Transit Company notified the Virginia companies of the District Commission's order No. 3209 and demanded of them 10 cents cash for each joint fare ticket used on its lines within the District, as of June 22, 1947, as its compensation under the joint fares collected by the Virginia companies. The said Virginia companies construed the letter of Capital Transit Company, dated June 17, 1947 as a request to change the divisions of

the present joint fare and that such proposal was not acceptable to the said Virginia companies; that the Virginia companies would agree to have the Interstate Commerce Commission determine a proper division of the fare in accordance with the applicable provisions of Part 2 of the Interstate Commerce Act, provided this issue could not be settled. The Virginia companies in August, 1947 petitioned the Interstate Commerce Commission for re-opening of its Docket No. 28991 so as to (1) abolish the prescribed token fare of 8⅓ cents for the Virginia companies between the Virginia installations and points and places within the District of Columbia; and (2) to fix a straight 10 cent fare for the Virginia companies for the transportation of persons between the Government installations and points and places within the District of Columbia. One of the issues considered by the Interstate Commerce Commission, after lengthy formal hearings, in Docket No. 28991, re-opened on the petitions of the aforesaid Virginia companies, was the division of the joint fares between the Virginia companies and Capital Transit Company. The Capital Transit Company and the Virginia companies, as well as other parties, fully participated in these further hearings. The parties by counsel, presented witnesses and offered evidence. In those proceedings, the Virginia companies requested that the division of the joint fare, if continued, provide 10 cents as the compensation for the Virginia companies' portion of the said joint fare.

By the Commission's report and order dated July 7, 1948, 270 I. C. C. 651, the Commission reaffirmed its views as to its jurisdiction but prescribed a new basis of joint fares and the divisions thereof.

The question of jurisdiction was fully considered and after consideration of the contentions made by Capital Transit Company, in that proceeding, which were identical

with the contentions made to the District Court, the Commission concluded that it had jurisdiction.

The report and order of July 7, 1948 was the subject of the second suit in the District Court of the United States for the District of Columbia, filed July 26, 1948, in Civil Action No. 3052-48.

An interlocutory injunction was claimed on August 4, 1948, in the consolidated suits restraining the enforcement of the Commission's orders and the two causes were orally argued and heard before the three-judge court on November 16 and 17, 1948.

The court thereafter held that the Interstate Commerce Commission had no jurisdiction to make the orders and directed that a permanent injunction issue.

The Questions Presented are Substantial

The questions here involved are substantial. The Alexandria, Barcroft and Washington Transit Company and the Washington, Virginia, and Maryland Coach Co., Incorporated respectfully contend that the District Court's judgment in the involved causes is erroneous as a matter of law, and sets aside the decision of the Supreme Court in *United States* v. *Capital Transit Company*, 325 U. S. 357.

The Supreme Court, in *United States* v. *Capital Transit Company*, supra, found, among other things, that the Interstate Commerce Commission properly exercised its jurisdiction under the National Transportation Policy of the Interstate Commerce Act. The Interstate Commerce Commission, in its report and order of July 7, 1948, 270 I. C. C. 651, comprehensively reviewed the facts and circumstances surrounding the promulgation of joint fares via the facilities of the Capital Transit Company and the Virginia companies.

In its order of July 7, 1948, the Commission reaffirmed its views concerning its jurisdiction and resolved the issues

presented by Capital Transit Company attacking the Commission's jurisdiction in connection with the prescription of joint fares on and after April 1, 1947. The Commission specifically found that its continued exercise of jurisdiction, which is discretionary, was now consonant with the National Transportation Policy of the Interstate Commerce Act although World War II had been terminated. The Commission also concluded that the discontinuance by Capital Transit Company of its service between the District of Columbia and the Pentagon Building, Arlington County, only, by its own vehicles, did not exempt Capital Transit Company from the Commission's jurisdiction.

The Alexandria, Barcroft and Washington Transit Company and the Washington, Virginia and Maryland Coach Company are now and have been since the enactment of the Motor Carrier Act of 1935, namely, Part II of the Interstate Commerce Act, subject to the jurisdiction of the Interstate Commerce Commission in the transportation of passengers, their baggage, express, and mail between points and places within the District of Columbia on the one hand, and points and places in the state of Virginia, including the governmental installations as more fully described in certificates of public convenience and necessity issued by the Interstate Commerce Commission. The decision of the District Court sets aside a bona fide contractual arrangement between the Capital Transit Company on the one hand, and the Virginia companies, on the other, without the consent or approval of the Virginia companies.

It is respectfully submitted that substantial and important questions as to the meaning and application of the Interstate Commerce Act, and the scope of the jurisdiction of the Interstate Commerce Commission thereunder, will be presented on appeal to the Supreme Court.

Copies of the District Court's opinion of November 17, 1948, its Findings of Fact, Conclusions of Law, Final Judg-

ment and Stay Pending an Appeal, all dated December 9, 1948, are made a part of the Statement as to jurisdiction filed with the Supreme Court by defendants-appellants, *United States* and *Interstate Commerce Commission*, and are therefore not attached hereto.

Dated February 3, 1949.

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